

Securities and Exchange Commission

§ 240.3b-8

S-B (§ 228.303 of this chapter) “Management’s Discussion and Analysis of Financial Condition and Results of Operations” or Item 5 of Form 20-F, “Operating and Financial Review and Prospects”, or Item 302 of Regulation S-K (§ 229.302 of this chapter), “Supplementary financial information,” or Rule 3-20(c) of Regulation S-X (§ 210.3-20(c)) of this chapter) or (ii) the value of proved oil and gas reserves (such as a standardized measure of discounted future net cash flows relating to proved oil and gas reserves as set forth in paragraphs 30-34 of Statement of Financial Accounting Standards No. 69) presented voluntarily or pursuant to Item 302 of Regulation S-K (§ 229.302 of this chapter).

(c) For the purpose of this rule, the term *forward-looking statement* shall mean and shall be limited to:

(1) A statement containing a projection of revenues, income (loss), earnings (loss) per share, capital expenditures, dividends, capital structure or other financial items;

(2) A statement of management’s plans and objectives for future operations;

(3) A statement of future economic performance contained in management’s discussion and analysis of financial condition and results of operations included pursuant to Item 303 of Regulation S-K (§ 229.303 of this chapter) or Item 5 of Form 20-F or

(4) Disclosed statements of the assumptions underlying or relating to any of the statements described in paragraphs (c) (1), (2), or (3) of this section.

(d) For the purpose of this rule the term *fraudulent statement* shall mean a statement which is an untrue statement of a material fact, a statement false or misleading with respect to any material fact, an omission to state a material fact necessary to make a statement not misleading, or which constitutes the employment of a manipulative, deceptive, or fraudulent device, contrivance, scheme, transaction, act, practice, course of business, or an artifice to defraud, as those terms are used in the Securities Exchange Act of

1934 or the rules or regulations promulgated thereunder.

[46 FR 13990, Feb. 25, 1981, as amended at 46 FR 19457, Mar. 31, 1981; 47 FR 11464, Mar. 16, 1982; 47 FR 54780, Dec. 6, 1982; 47 FR 57915, Dec. 29, 1982; 48 FR 19876, May 3, 1983; 56 FR 30067, July 1, 1991; 57 FR 36494, Aug. 13, 1992; 64 FR 53912, Oct. 5, 1999]

§ 240.3b-7 Definition of “executive officer”.

The term *executive officer*, when used with reference to a registrant, means its president, any vice president of the registrant in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy making function or any other person who performs similar policy making functions for the registrant. Executive officers of subsidiaries may be deemed executive officers of the registrant if they perform such policy making functions for the registrant.

[47 FR 11464, Mar. 16, 1982, as amended at 56 FR 7265, Feb. 21, 1991]

§ 240.3b-8 Definitions of “Qualified OTC Market Maker, Qualified Third Market Maker” and “Qualified Block Positioner”.

For the purposes of Regulation U under the Act (12 CFR part 221):

(a) The term *Qualified OTC Market Maker* in an over-the-counter (“OTC”) margin security means a dealer in any “OTC Margin Security” (as that term is defined in section 2(j) of Regulation U (12 CFR 221.2(j)) who (1) is a broker or dealer registered pursuant to section 15 of the Act, (2) is subject to and is in compliance with Rule 15c3-1 (17 CFR 240.15c3-1), (3) has and maintains minimum net capital, as defined in Rule 15c3-1, of the lesser of (i) \$250,000 or (ii) \$25,000 plus \$5,000 for each security in excess of five with regard to which the broker or dealer is, or is seeking to become a Qualified OTC Market Maker, and (4) except when such activity is unlawful, meets all of the following conditions with respect to such security: (i) He regularly publishes bona fide, competitive bid and offer quotations in a recognized inter-dealer quotation system, (ii) he furnishes bona fide, competitive bid and offer quotations to other brokers and dealers on request,

§ 240.3b-9

17 CFR Ch. II (4-1-01 Edition)

(iii) he is ready, willing and able to effect transactions in reasonable amounts, and at his quoted prices, with other brokers and dealers, and (iv) he has a reasonable average rate of inventory turnover in such security.

(b) The term *Qualified Third Market Maker* means a dealer in any stock registered on a national securities exchange ("exchange") who (1) is a broker or dealer registered pursuant to section 15 of the Act, (2) is subject to and is in compliance with Rule 15c3-1 (17 CFR 240.15c3-1), (3) has and maintains minimum net capital, as defined in Rule 15c3-1, of the lesser of (i) \$500,000 or (ii) \$100,000 plus \$20,000 for each security in excess of five with regard to which the broker or dealer is, or is seeking to become, a Qualified Third Market Maker, and (4) except when such activity is unlawful, meets all of the following conditions with respect to such security: (i) He furnishes bona fide, competitive bid and offer quotations at all times to other brokers and dealers on request, (ii) he is ready, willing and able to effect transactions for his own account in reasonable amounts, and at his quoted prices with other brokers and dealers, and (iii) he has a reasonable average rate of inventory turnover in such security.

(c) The term *Qualified Block Positioner* means a dealer who (1) is a broker or dealer registered pursuant to section 15 of the Act, (2) is subject to and in compliance with Rule 15c3-1 (17 CFR 240.15c3-1), (3) has and maintains minimum net capital, as defined in Rule 15c3-1 of \$1,000,000 and (4) except when such activity is unlawful, meets all of the following conditions: (i) He engages in the activity of purchasing long or selling short, from time to time, from or to a customer (other than a partner or a joint venture or other entity in which a partner, the dealer, or a person associated with such dealer, as defined in section 3(a) (18) of the Act, participates) a block of stock with a current market value of \$200,000 or more in a single transaction, or in several transactions at approximately the same time, from a single source to facilitate a sale or purchase by such customer, (ii) he has determined in the exercise of reasonable diligence that the block could not be sold to or purchased from

others on equivalent or better terms, and (iii) he sells the shares comprising the block as rapidly as possible commensurate with the circumstances.

(15 U.S.C. 78a *et seq.*, as amended by Pub. L. 94-29 (June 4, 1975), particularly secs. 2, 3, 11, 15, 17 and 23 thereof (15 U.S.C. 78b, 78c, 78k, 78o, 78q and 78w))

[48 FR 39606, Sept. 1, 1983]

§ 240.3b-9 Definition of "bank" for purposes of section 3(a) (4) and (5) of the Act.

(a) The term *bank* as used in the definition of *broker* and *dealer* in section 3(a) (4) and (5) of the Act does not include a bank that:

(1) Publicly solicits brokerage business for which it receives transaction-related compensation, unless the bank enters into a contractual or other arrangement with a broker-dealer registered under the Act pursuant to which the broker-dealer will offer brokerage services on or off the premises of the bank, provided that:

(i) Such broker-dealer is clearly identified as the person performing the brokerage services;

(ii) Bank employees perform only clerical and ministerial functions in connection with brokerage transactions unless such employees are qualified as registered representatives pursuant to the requirements of the self-regulatory organizations;

(iii) Bank employees do not receive, directly or indirectly, compensation for any brokerage activities unless such employees are qualified as registered representatives pursuant to the requirements of the self-regulatory organizations; and

(iv) Such services are provided by the broker-dealer on a basis in which all customers are fully disclosed.

(2) Directly or indirectly receives transaction-related compensation for providing brokerage services for trust, managing agency or other accounts to which the bank provides advice, provided, however, that this subsection shall not apply if the bank executes transactions through a registered broker-dealer and:

(i) Each account independently chooses the broker-dealer through which execution is effected;